UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jason Baker, on behalf of himself and all those similarly situated, Plaintiff, vs. Equifax, Inc. Defendant.	Case No.: ____________________ Case Type: Consumer Credit **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Jason Baker ("Plaintiff"), on behalf of himself and all others similarly situated, brings this class action against Defendant Equifax, Inc. ("Equifax" or "Defendant"), by and through counsel, and alleges as follows:

NATURE OF ACTION

1. Plaintiff brings this action in response to one of the largest data breaches involving consumers' personally identifying information stored by Defendant, one of the three major credit reporting agencies. This class action seeks to redress Defendant's failure to adequately safeguard this information and related data associated with Plaintiff Jason Baker and all others similarly situated. Because of this data breach, Plaintiff and all others similarly situated are vulnerable to further injuries such as identity theft, fraudulent transactions, harm to their credit, false tax claims, as well as other financial harms due to the exposure of their sensitive personal data.

PARTIES

2. Plaintiff Jason Baker is a citizen of Minnesota and resides in Hennepin County.

3. Equifax is incorporated in Georgia with its principal place of business at 1500 Peachtree Street NW, Atlanta, Georgia. It is a leading global information solutions company that organizes, assimilates, and analyzes data on more than 820 million consumers and more than 91 million businesses worldwide, including a database of employee data from more than 7,100 employers.[1] Defendant operates through its various subsidiaries that include Equifax Information Services, LLC and Equifax Consumer Services, LLC.

4. Defendant does business nationwide, including in the state of Minnesota.

5. Consumers throughout the United States, including the District of Minnesota, are affected by Equifax's failure to adequately secure their personally identifying information.

FACTS

6. On September 7, 2017, Equifax disclosed to the public a cybersecurity incident potentially impacting approximately 143 million U.S. consumers.[2]

7. On July 29, 2017, Defendant discovered that data was being accessed without authorization through vulnerability in a U.S. website application that allowed third parties to access a vast amount of personal identifying information.

[1] Equifax Company Profile, https://www.equifaxsecurity2017.com/ (last visited Sep. 27, 2017).
[2] Equifax Security Breach Alerts, https://www.equifaxsecurity2017.com/ (last visited Sep. 27, 2017).

8. Equifax identified unauthorized access occurrences from mid-May through July 2017. However, it did not publicly announce the cyberattack for six weeks, despite the severity of the breach. The cyberattack included the release of Social Security numbers, birth dates, addresses and driver's license numbers of millions of U.S. consumers.

9. Upon information and belief, the wrongful acts and/or decisions made by Defendant leading to this data breach occurred nationwide, including the District of Minnesota.

10. Credit-card numbers for approximately 209,000 consumers, as well as dispute records containing the personal identifying information of roughly 182,000 consumers, were also accessed.

11. The individuals whose personal information was compromised did not authorize such access or disclosure by Defendant.

12. Defendant has stated that the data is presumed to be in the hands of criminals. Defendant claims to be a sophisticated company with industry expertise in the area of handling "trusted unique data" such as highly sensitive personal information of consumers like the Plaintiff. In recent years, Defendant has been investigated, sued and fined a number of times due to flaws in their systems that store and handle personal consumer credit information.

13. Defendant created a website for U.S. consumers to determine whether they were affected by the cyberattack and allow them to enroll in free credit morning. This website was also flawed. It lacked adequate security for consumer information. The website has issues with their Transport Layer Security implementation and uses free blogging software for its platform which is unsuitable for transmitting such sensitive personal data.

14. To verify whether their information has been compromised, consumers must provide their last name and the last 6 digits of their social security number with no assurance that the information will be secure. The website appears to generate the same responses regardless of the information provided by the consumer, whether valid or fictional. Consumers are asked to enroll in an Equifax product called "TrustID" when they submit their information. This product requires further sensitive personal information to be submitted.

JURISDICTION AND VENUE

15. This Court has original jurisdiction pursuant to 28 U.S.C.A. § 1332(d)(2), in that the matter in controversy, exclusive of interest and costs, exceeds the sum of $5,000,000 and is a class action in which members of the Class are citizens of a state that is different from Defendant. Additionally and alternatively, this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff brings claims arising under federal law based on Equifax's violations of the FCRA, 15 U.S.C. § 1681 et seq. The Court has supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367(a).

16. This court has personal jurisdiction over Defendant because it conducts significant business in the District of Minnesota, and the conduct alleged in the Complaint occurred in, was directed to, and/or emanated from this District.

17. Venue is proper pursuant to 28 U.S.C § 1391 because a substantial part of the unlawful practices giving rise to Plaintiff's and putative Class members' claims occurred in this jurisdiction. Defendant is authorized to do business in the District of Minnesota and is subject to personal jurisdiction in this District.

CLASS ACTION ALLEGATIONS

18. Plaintiff, individually and on behalf of all of the proposed Rule 23 Class members, re-alleges and re-incorporates by reference the above paragraphs as if fully set forth herein.

19. The Classes are defined as:

Nationwide Class:

All United States residents whose personally identifiable information ("PII") was accessed in the data breach Equifax announced on September 7, 2017.

Minnesota Subclass:

All residents of Minnesota whose PII was accessed by unauthorized individuals in the data breach Equifax announced on September 7, 2017.

20. Plaintiff brings claims in this Complaint individually and on behalf of the Classes.

21. The Classes are so numerous that joinder of all members is impracticable. The exact number and identities can only be ascertained through appropriate discovery.

22. The wrongful conduct by the Defendant affected all Class members in the same way, including: a) improper storage of consumers' personal information by the Defendant; b) failure to safeguard consumers' personal information by the Defendant; c) failure of Defendant to immediately notify consumers of the breach and/or notify them directly as soon as practicable after discovery of the breach; and d) failure by the Defendant to monitor systems and ensure compliance with pertinent PCI data security standards, statutes, and regulations.

23. Questions of law and fact common to all Class members predominate over any questions affecting only individual Class members including, without limitation:

a) Whether Defendant knew, or reasonably should have known, about the deficiencies in their data storage systems;

b) Whether Defendant acted wrongfully by improperly monitoring, storing and/or failing to properly safeguard consumers' personal information;

c) Whether Defendant owed a duty to Class members under federal or state law to protect their personal information, provide timely notice of unauthorized access to this information, and provide meaningful and fair redress;

d) Whether Defendant breached this duty;

e) Whether Defendant willfully failed to design, employ, and maintain a system adequate to protect consumers' personal information;

f) Whether representations that Defendant made about the security of their systems were false or misleading;

h) Whether Defendant' failures resulted in the breach at issue;

i) Whether Defendant failed to properly and timely notify Plaintiff and Class members of the breach as soon as practical after it was discover Whether Defendant' actions and omissions violated applicable state consumer protection laws; and

j) Whether Plaintiff and Class members have been damaged and, if so, the appropriate relief.

24. Plaintiff's claims are typical of the claims of all Class members because such claims arise from Equifax's wrongful conduct, as alleged above, pertaining to Plaintiff's and Class members' personal information. Plaintiff has no interests antagonistic to the interests of the other Class members.

25. Plaintiff will fairly and adequately represent and protect the interests of the Class members. Plaintiff has retained competent counsel experienced in complex consumer litigation, class actions, data breach, and privacy litigation to represent himself and the Classes.

26. This class action also provides a fair and efficient method for adjudicating the claims of Plaintiff and Class members for the following reasons:

a) common questions of law and fact predominate over any question affecting any individual Class member;

b) the prosecution of separate actions by individual Class members would likely create a risk of inconsistent or varying adjudications with respect to individual Class members, thereby establishing incompatible standards of conduct for the Defendant and/or would allow some Class members' claims to adversely affect the ability of other Class members to protect their interests;

c) Plaintiff anticipates no difficulty in the management of this litigation as a class action; and

d) The Class is readily definable. Prosecution as a class action will eliminate the possibility of repetitious litigation while also providing redress for claims that may be too small to support the expense of individual, complex litigation.

For these reasons, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Certification, therefore, is appropriate under Rule 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure.

COUNT I
NEGLIGENCE

27. Plaintiff incorporates each paragraph of this Complaint as if set forth fully here, and further alleges as follows.

28. Defendant was, and continues to be, in confidential, special and/or fiduciary relationships with Plaintiff and Class members by virtue of being entrusted with their personal information. At the very least, therefore, Defendant assumed a duty, and had duties imposed upon them by regulations, to use reasonable care to keep Plaintiff's and Class members' information private and secure, including a duty to comply with

applicable PCI data security standards, statutes and/or regulations.

29. Defendant also had a duty to timely inform Plaintiff and Class members of the breach and the fact that their personal information had been stolen and/or compromised, and, upon learning of the breach, a duty to take immediate action to protect Plaintiff and Class members from the foreseeable consequences of the breach. By its acts and omissions described herein, Defendant unlawfully breached its duty, and Plaintiff and Class members were harmed as a direct result.

30. Defendant knew, or should have known, that its computer network for processing and storing consumers' personal information had security vulnerabilities. Defendant was negligent by continuing to accept, process, and store such information in light of these computer network vulnerabilities and the sensitivity of the personal information stored within.

31. The breach, and the resulting damages suffered by Plaintiff and Class members, were the direct and proximate result of a number of actions and omissions, including but not limited to:

a) Defendant's improper retention and storage of Plaintiff's and Class members' personal information;

b) Defendant's failure to use reasonable care to implement and maintain appropriate security procedures reasonably designed to protect such information;

c) Defendant's delay in notifying Plaintiff and Class members about the breach for more than a month; and

d) Defendant's failure to take immediate and effective action to protect Plaintiff and Class members from potential and foreseeable damage.

32. Defendant's wrongful actions constitute negligence.

33. Plaintiff and Class members have not in any way contributed to the security breach or the compromise or theft of their personal information.

COUNT II
NEGLIGENCE PER SE

34. Plaintiff incorporates each paragraph of this Complaint as if set forth fully here, and further alleges as follows.

35. Pursuant to the Gramm-Leach-Bliley Act (the "Act"), 15 U.S.C. § 6801, Defendant had a duty to protect and keep consumers' personal information secure, private and confidential.

36. Defendant violated the Act by not adequately safeguarding Plaintiff's and Class members' Sensitive Personal Information; and monitoring and ensuring that Defendant complied with PCI data security standards, card association standards, statutes and/or regulations designed to protect such information.

37. Defendant also failed to comply with PCI data security standards, statutes and regulations prohibiting the storage of unprotected personal information.

38. Defendant' failure to comply with the Act, industry standards and/or regulations constitutes negligence per se.

COUNT III
VIOLATION OF FAIR CREDIT REPORTING ACT ("FCRA")

39. Plaintiff incorporates by reference the allegations in the preceding

paragraphs as if fully set forth herein.

40. Plaintiff and Class members are individual consumers within the meaning of the FCRA, 15 U.S.C. § 1681a(c).

41. The personal information at issue was a "consumer report" within the meaning of the FCRA (15 U.S.C. § 1681a(d)) because the personal information was a communication of information that bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of Plaintiff and Class members that was expected to be used or collected to serve as a factor in establishing Plaintiff's and class members' eligibility for credit.

42. Defendant is a consumer reporting agency within the meaning of the FCRA (15 U.S.C. § 1681e(a)) because it regularly engages, for monetary fees, in assembling and evaluating consumer credit information and other consumer information for the purpose of furnishing consumer reports to third parties, such as banks, cell phone carriers, and other lenders and retailers.

43. Under the FCRA, Defendant is required to maintain reasonable procedures that are designed to limit the furnishing of consumer reports to six circumstances ("purposes") identified at 15 U.S.C. § 1681b.

44. Defendant violated the FCRA by furnishing the personal information in various consumer reports to the unauthorized individuals or entities that accessed the personal information through the Equifax website, because furnishing consumer reports in such circumstances is not one of permitted the "purposes" under the FCRA. In addition, Defendant failed to maintain reasonable technological or other procedures

designed to prevent such impermissible furnishing of consumer reports.

45. In view of Defendant's knowledge, experience, and expertise in consumer data security, prior failures in their systems, and the fact that the breach here was so vast, affected such core consumer information, and went on for so long without detection, it also is clear that Defendant acted willfully or recklessly in their failure to safeguard the personal information at issue here.

46. Defendant's willful and/or reckless violations of the FCRA provided the means for third parties to access, obtain, and misuse the personal information of Plaintiff and Class Members without authorization and for purposes not permitted by the FCRA.

47. Defendant' violation of their duties under the FCRA constitutes a de facto injury to Plaintiff and Class members. In addition, Defendant's violation of the FCRA has directly and proximately injured Plaintiff and Class members, including by foreseeably causing them to expend time and resources investigating the extent to which their personal information has been compromised, taking reasonable steps to minimize the extent to which the breach puts their credit, reputation, and finances at risk, and taking reasonable steps (now or in the future) to redress fraud, identity theft, and similarly foreseeable consequences of criminals obtaining the personal information.

48. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), Plaintiff and each of the Class members are entitled to recover actual damages, or statutory damages of not less than $100 and nor more than $1,000 per affected consumer.

COUNT IV
BREACH OF FIDUCIARY DUTY

49. Plaintiff incorporates each paragraph of this Complaint as if set forth fully here, and further alleges as follows.

50. By virtue of their possession, custody and/or control of Plaintiff's and Class members' personal information, and their duty to properly monitor and safeguard it, Defendant was, and continues to be, in a confidential, special and/or fiduciary relationship with Plaintiff and Class members. As a fiduciary, Defendant owed, and continues to owe, Plaintiff and Class members:

a) the commitment to deal fairly and honestly;

b) the duties of good faith and undivided loyalty; and

c) integrity of the strictest kind.

51. Defendant was, and continues to be, obligated to exercise the highest degree of care in carrying out its responsibilities to Plaintiff and Class members under such confidential, special and/or fiduciary relationships.

52. Defendant breached its fiduciary duties to Plaintiff and Class members by, inter alia, improperly storing, monitoring and/or safeguarding Plaintiff's and Class members' personal information.

53. To the extent that Defendant is a fiduciary who did not breach the duties outlined above, Defendant is nonetheless liable because they had knowledge of the breaches of fiduciary duty committed by other fiduciaries, and did not make reasonable efforts under the circumstances to remedy such fiduciary breaches.

54. Defendant breached its fiduciary duties to Plaintiff and Class members by its wrongful actions described above. Defendant willfully and wantonly breached its

fiduciary duties to Plaintiff and Class members or, at the very least, committed these breaches with conscious indifference and reckless disregard of their rights and interests.

COUNT V
BREACH OF CONTRACT

55. Plaintiff incorporates each paragraph of this Complaint as if set forth fully here, and further alleges as follows.

56. Plaintiff and Class members were parties to actual or implied contracts with Defendant that required Defendant to properly safeguard their personal information from theft, compromise and/or unauthorized disclosure.

57. Additionally, Plaintiff and Class members were third party beneficiaries to contracts and/or agreements by and between Defendant and other institutions and networks. These agreements required Defendant to properly safeguard personal information from theft, compromise and unauthorized disclosure.

58. Defendant breached their agreements with Plaintiff and Class members by failing to properly safeguard personal information from theft, compromise and/or unauthorized disclosure. Defendant's wrongful conduct constitutes breach of contract.

COUNT VI
BAILMENT

59. Plaintiff incorporates each paragraph of this Complaint as if set forth fully here, and further alleges as follows.

60. Plaintiff's and Class members' personal information is their personal property, which they delivered to Defendant for the sole and specific purpose of compiling and/or transmitting credit information.

61. Defendant accepted Plaintiff's and Class members' personal information. As a bailee, Defendant owed a duty to Plaintiff and Class members and, in fact, had an express and/or implied contract with them, to properly protect their personal information from theft, compromise and/or unauthorized disclosure.

62. Defendant breached its duty and/or express and implied contracts with Plaintiff and Class members by, inter alia, improperly storing and inadequately protecting their personal information from theft, compromise and/or unauthorized disclosure, which directly and proximately caused Plaintiff and Class members to suffer damages.

63. Defendant's wrongful actions constitute breaches of its duty to (and/or express and/or implied contracts with Plaintiff and Class members arising from the bailment.

COUNT VII

VIOLATION OF MINN. STAT. § 325E.61

(ON BEHALF OF THE MINNESOTA SUBCLASS)

73. Plaintiff incorporates each paragraph of this Complaint as if set forth fully here, and further alleges as follows.

74. Minnesota Statute § 325E.61, subd. 1 requires that any business conducting business in Minnesota, and owns or licenses data that includes personal information, is required to disclose any security breach of its system following the discovery that any resident of Minnesota whose unencrypted personal information was, or is reasonably believed, to have been acquired by an unauthorized person.

75. Businesses that maintain personal information that the business does not own are required to notify the owners of the information of any breach in the security of the data immediately following discovery of the information was, or is reasonably believed to have been, acquired by an unauthorized person.

76. The data exposed in this breach constitutes "personal information" as set out in Minn. Stat. § 325E.61, subd. 1(e).

77. Thus, Defendant violated Minn. Stat. § 325E.61 which mandates immediate notification of a breach by waiting over five weeks following the discovery of the breach before it notified the public.

78. Minn. Stat. § 325E.61, subd. 2 also requires that upon discovery of circumstances requiring notification to more than 500 persons, the person or business discovering the breach shall notify, within 48 hours, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis.

79. Defendant failed to notify the other consumer reporting agencies of its security breach within the required 48-hour time period set out in Minn. Stat. § 325E.61, subd. 2.

80. The Minnesota Subclass members were injured by Defendant's delay in notifying them and the other consumer reporting agencies.

81. Minn. Stat. § 8.31, provides that any person injured by a violation of § 325E.61 may bring a civil action to recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.

82. On behalf of himself and the Minnesota Subclass, Plaintiff seeks actual damages, statutory damages, reasonable attorneys' fees and costs, and other equitable relief as determined by this court.

PRAYER FOR RELIEF

83. Defendant's wrongful conduct has damaged Plaintiff and Class members in the form of: a) the unauthorized disclosure and/or compromise of their personal information; b) monetary losses and damage to credit from fraudulent charges made on their accounts; and c) the burden and expense of credit monitoring.

84. Plaintiff and Class members' damages were reasonably foreseeable by Defendant.

85. Plaintiff and Class members are entitled to equitable relief to prevent any additional harm including, but not limited to, provision of credit monitoring services for a period of time to be determined by the trier of fact.

86. Plaintiff and Class members are entitled to recover their reasonable and necessary attorneys' fees, litigation expenses and court costs.

WHERFORE, Plaintiff, individually and on behalf of the proposed Rule 23 Class, prays for the following relief:

A. Certify this as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiff as representative of the Class, and appoint Plaintiff's counsel as Class Counsel;

B. Enter judgment in favor of Plaintiff and the Class against Defendant under the legal theories alleged herein;

C. Award damages and/or equitable relief in an amount to be determined by the trier of fact;

D. Award attorneys' fees, expenses and costs of suit;

E. Award pre-judgment and post-judgment interest at the maximum rate allowed by law; and

F. Such other and further relief as to this Court may deem necessary, just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all counts.

Dated: October 12, 2017

Respectfully submitted:

TESKE, MICKO, KATZ, KITZER & ROCHEL, PLLP

By: *_/s Vildan A. Teske_*
Vildan A. Teske (#0241404)
Marisa C. Katz (#0389709)
222 South Ninth Street, Suite 4050
Minneapolis, Minnesota 55402
Tel: (612) 746-1558
Fax: (651) 846-5339
teske@teskemicko.com
katz@teskemicko.com

Attorneys for Plaintiff and the Class

ACKNOWLEDGMENT

The undersigned acknowledges that pursuant to Minn. Stat. § 549.11, subd.2, that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

Dated: October 12, 2017

/s Vildan A. Teske
Vildan A. Teske
Attorney (Bar No. 241404)